

Decision 16-09-026 September 15, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of James L. and Marianne S. Orvis to sell, and Aspen Forest Investment Co., LLC, to buy, Five Thousand (5,000) Shares of the Common Stock of the water system known as Lake Alpine Water Company, Inc. (U148WTD) Located in Alpine County, California.

Application 11-04-013
(Filed April 15, 2011)

**DECISION REVISING INTERVENOR COMPENSATION AWARDED
TO THE RATEPAYERS OF LAKE ALPINE WATER COMPANY**

Summary

This decision revises the intervenor compensation awarded to the Ratepayers of Lake Alpine Water Company (RLAWC) in Decision (D.) 14-11-016, as modified by D.15-06-036. D.14-11-016 awarded RLAWC \$42,517.07 for substantial contributions to D.13-03-007. This decision awards RLAWC an additional \$33,967.39 for substantial contributions to D.13-03-007, for a total award of \$76,484.46. Within 30 days of the date of this decision, Lake Alpine Water Company (LAWC) must pay RLAWC \$33,967.39, in addition to the amount awarded in D.14-11-016. LAWC may file a Tier 1 advice letter to adjust its rates in order to fully recover \$33,967.39, pursuant to Public Utilities Code Section 1807.

Application 11-04-013 is closed.

1. Background

Lake Alpine Water Company, Inc. (LAWC), is a Class D water utility subject to the jurisdiction of this Commission. On February 11, 2003, Aspen Forest Investment Co., LLC (Aspen) purchased 5,000 shares of LAWC's common stock, which represents 50 percent of LAWC's total common stock, from James L. and Marianne S. Orvis (J&M Orvis). J&M Orvis and Aspen did not file an application for authority for the February 2003 transaction, apparently believing that they were not required to do so pursuant to §§ 851 - 854 of the Public Utilities Code. However, on April 15, 2011, J&M Orvis and Aspen filed Application (A.) 11-04-013, requesting that the transfer of stock be granted on a *nunc pro tunc* basis. Ratepayers of LAWC (RLAWC) and Bruce and Paula Orvis filed protests, asserting that the 2003 transaction was null and void for failing to obtain Commission approval and that the transaction was against the public interest.

On March 29, 2013, the Commission issued Decision (D.) 13-03-007, Granting Conditional Authority for J&M Orvis to Sell and Aspen Forest Investment Co., LLC, to Buy 5,000 Shares of Common Stock of the LAWC. In D.13-03-007, the Commission ruled that A.11-04-013 was subject to § 854(a).

On May 28, 2013, RLAWC filed a claim for intervenor compensation. On November 6, 2014, D.14-11-016 awarded RLAWC compensation of \$42,517.07. On November 26, 2014, RLAWC filed an application for rehearing of D.14-11-016, which was partially granted by D.15-06-036 on June 11, 2015.

2. Discussion

2.1. Award of Intervenor Compensation Supported by a Numerical Calculation

D.15-06-036 found that RLAWC made a substantial contribution on one additional issue than determined in D.14-11-016. On that basis, D.15-06-036

granted limited rehearing of D.14-11-016 to consider the merits of the determination that RLAWC made a substantial contribution on 25 percent of the matters it raised in the proceeding.

In compliance with D.15-06-036, we have reconsidered RLAWC's substantial contributions to D.13-03-007, and have revised the intervenor compensation award accordingly. The award now includes RLAWC's contribution on the issue of "stalemate." A review of RLAWC's briefs and comments indicate that the stalemate issue was raised by RLAWC to demonstrate its position that the stock sale can create a stalemate, which constitutes control.

RLAWC's out-of-pocket costs are also revised and awarded proportionally to the issues on which it substantially contributed. There is no record evidence that RLAWC's out of pocket costs are normally absorbed in overheads and that these types of costs are normally compensable. The calculation of RLAWC's revised intervenor compensation award is based on the following:

1. RLAWC made a substantial contribution on 10 of 19 issues listed in its May 28, 2013 request for intervenor compensation.
2. Two of the issues generically addressed evidentiary hearing participation, the preparation of briefs and comments on the Proposed Decision, and *ex parte* meetings.
3. The Commission adjusts Issues 18 and 19 in order to consider only the time spent on hearings and document preparation for the issues on which RLAWC made a substantial contribution.
4. Taking the adopted issues divided by total issues requested, results in a percentage of 47.06. This represents the percent of hours claimed by RLAWC that were adopted by the Commission in D.14-11-016, as modified by D.15-06-036.

5. When 47.06 percent is applied to the hours claimed in each year, the revised award for hours claimed is \$72,712.43.
6. When 47.06 percent is applied to the \$3,074.93 in requested out-of-pocket costs (also referred to as Office Costs), the revised award for out-of-pocket costs is \$1,447.03.

Year	Requested Hours	Revised Hours	Rate Per D.14-11-016	Total
2011	74.95	35.27	\$ 300.00	\$ 10,581.20
2012	396.9	186.78	\$ 305.00	\$ 56,966.97
2013	35.4	16.66	\$ 310.00	\$ 5,164.25
			Subtotal of Hours	\$ 72,712.43
			Drafting Icomp	\$ 2,325.00
			Office Costs	\$ 1,447.03
				\$ 76,484.46

Because RLAWC has already been awarded intervenor compensation of \$42,517.07 in D.14-11-016, it may now recover an additional \$33,967.39, the difference between what it has already been awarded and the revised award of \$76,484.46, adopted herein. This award of \$76,484.46 is instead of, not in addition to, the previous award in D.14-11-016.

Within 30 days of the effective date of this decision, LAWAC shall pay RLAWC \$33,967.39, the difference between the original award of \$42,517.07 and the revised total award of \$76,484.46, adopted herein.

LAWAC may file an advice letter requesting authority to adjust rates in order to recover \$33,967.39, the difference between intervenor compensation of

\$42,517.07, awarded in D.14-11-016 and the revised total award of \$76,484.46, adopted herein.

3. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge Division in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 24, 2016, by RLAWC and Aspen. Reply comments were filed on August 29, 2016, by RLAWC and Aspen. The Comments have been considered herein.

4. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Seaneen M. Wilson, retired, was the assigned Administrative Law Judge for the proceeding.

Findings of Fact

1. On May 28, 2013, RLAWC filed a claim for intervenor compensation.
2. On November 6, 2014, D.14-11-016 awarded RLAWC intervenor compensation of \$42,517.07.
3. On November 26, 2014, RLAWC filed an application for rehearing of D.14-11-016.
4. On June 11, 2015, D.15-06-036 ordered, in part, that "Limited rehearing of D.14-11-016 is granted to consider the merits of the determination that RLAWC made a substantial contribution on 25 percent of the matters it raised in the proceeding. The limited rehearing will determine the appropriate out-of-pocket cost award consistent with the determination of substantial contribution."
5. D.15-06-036 found that RLAWC made a substantial contribution on one additional issue, stalemate, than was determined in D.14-11-016.

6. Pursuant to D.14-11-016, as modified by D.15-06-036, RLAWC provided substantial contribution to nine of nineteen issues listed in its May 28, 2013 request for intervenor compensation.

7. Two of the nineteen issues on which RLAWC substantially contributed (Issues 18 and 19) generically addressed evidentiary hearing participation, the preparation of briefs and comments on the Proposed Decision, and *ex parte* meetings.

8. The Commission adjusts Issues 18 and 19 in order to consider only the time spent on hearings and document preparation for the issues on which RLAWC substantially contributed.

9. The percentage of issues claimed by RLAWC that were adopted by the Commission in D.14-11-016, as modified by D.15-06-036, is 47.06 percent.

10. When 47.06 percent is applied to the hours claimed in each year of the proceeding, the revised dollar award for hours is \$72,712.43.

11. When 47.06 percent is applied to the requested out-of-pocket costs of \$3,074.93, the revised award for out-of-pocket costs is \$1,447.03.

12. When combined with the other components of the intervenor compensation regarding drafting of the intervenor compensation claim and revised out-of-pocket costs, the revised award totals \$76,484.46.

13. The difference between the intervenor compensation of \$42,517.07 awarded in D.14-11-016 and the revised total award of \$76,484.46 adopted herein, is \$33,967.39.

Conclusions of Law

1. D.15-06-036 ordered, "Limited rehearing of D.14-11-016 is granted to consider the merits of the determination that RLAWC made a substantial contribution on 25 percent of the matters it raised in the proceeding. The limited

rehearing will determine the appropriate out-of-pocket cost award consistent with the determination of substantial contribution.” We have reviewed and revised RLAWC’s substantial contribution and out-of-pocket costs herein, and therefore, are in compliance with D.14-11-016.

2. The Commission should adopt a revised award of \$72,212.43 to RLAWC for hours claimed.

3. The Commission should adopt a revised award of \$1,447.03 to RLAWC for out-of-pocket costs.

4. The Commission should revise RLAWC’s total award for intervenor compensation granted in D.14-11-016, from \$42,517.07 to \$76,484.46.

5. LAW C may file an advice letter requesting authority to adjust rates in order to recover \$33,967.39, the difference between intervenor compensation of \$42,517.07 awarded in D.14-11-016 and the revised total of \$76,484.46, adopted herein.

6. Within 30 days of the effective date of this decision, LAW C should pay RLAWC \$33,967.39, the difference between the intervenor compensation of \$42,517.07 awarded in D.14-11-016 and the revised award of \$76,484.46 adopted herein.

7. A.11-04-013 should be closed.

O R D E R

1. The Ratepayers of Lake Alpine Water Company is awarded a revised Intervenor Compensation award of \$76,484.46. This award is instead of, not in addition to, the \$42,517.07 awarded in Decision 14-11-016.

2. Within 30 days of the effective date of this decision, Lake Alpine Water Company shall pay Ratepayers of Lake Alpine Water Company \$33,967.39,

which is the difference between the original award of \$42,517.07 and the award, adopted herein of \$76,484.46.

3. Lake Alpine Water Company shall file an advice letter to adjust its rates in order to recover \$33,967.39, the difference between intervenor compensation of \$42,517.07 awarded in Decision 14-11-016 and the revised amount of \$76,484.46, adopted herein.

4. Application 11-04-013 is closed.

This order is effective today.

Dated September 15, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

LIANE M. RANDOLPH

Commissioners

Commissioner Carla J. Peterman, being
necessarily absent, did not participate.